

# THOMAS J. GILLOOLY

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March 16, 2015

Meredith George Thomas  
Assistant United States Attorney  
P. O. Box 1713  
Charleston, WV 25326

**RE: U. S. v. Gary K. Griffith, No. 2:14-cr-00118**

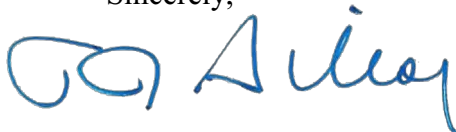
Dear Ms. Thomas:

I write regarding the relationship between the plea agreement reached in this case and the briefing the court ordered at the March 10 hearing. *See* order entered March 12 (ECF 24). As you know, the court ordered both parties to brief whether the shuttle car kickback scheme, and specifically the dollar amount it involved, may properly be treated as relevant conduct in calculating the Defendant's recommended guideline level. The court questioned whether, under the Guidelines, the kickback conduct is relevant to Mr. Griffith's plea to making a false statement, in violation of 18 U.S.C. § 1001 (a)(2). The Defendant's false statement occurred substantially after his participation in the kickback scheme (and his employment by Arch Coal) ended. (The court also identified the timing issue as possibly undermining the "role in the offense" enhancement in the plea agreement.)

In complying with the court's order, I do not intend to advocate a position that conflicts with the terms of the plea agreement, or that is inconsistent with Mr. Griffith's responsibilities under it. I recognize that doing so could arguably be a breach of the agreement. Mr. Griffith does not intend to jeopardize his bargain with the United States.

I do intend, of course, to comply with the court's directive that the parties brief the question whether the kickback dollars are properly treated as relevant conduct, and possibly the separate question whether the role enhancement is proper under the Guidelines. I am professionally obliged to comply with the court's order. I believe that my obligation is to discuss the relevant authority candidly, and to offer my legal analysis to the best of my professional ability. I do not intend to advocate a particular outcome, nor to seek relief from the terms of the plea agreement.

Sincerely,



Thomas J. Gillooly

cc: Gary Griffith